

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION**

Antwan Lockwood) Civil Action No. 1:19-2134-RMG
)
 Plaintiff,)
)
 v.) **ORDER AND OPINION**
)
 Sheriff Al Cannon Detention Center,)
)
 Defendant.)
)

Before the Court is the Report and Recommendation ("R & R") of the Magistrate Judge recommending that this case be dismissed with prejudice and without issuance and service of process. (Dkt. No. 13.) For the reasons set forth below, the Court adopts the R & R as the Order of the Court and dismisses Defendant with prejudice and without issuance and service of process.

I. Background

Plaintiff is an incarcerated person proceeding *pro se* to allege violation of his constitutional rights pursuant to 42 U.S.C. § 1983 stemming from an alleged assault by fellow inmates. Plaintiff originally brought suit against the Charleston County Detention Center, the Charleston County Sheriff's Office, and Sheriff Al Cannon. Because the original complaint failed to name as a defendant a person amenable to suit under Section 1983, the Magistrate Judge issued an order allowing Plaintiff to correct the pleading deficiencies. (Dkt. No. 5.) Plaintiff filed an amended complaint, alleging virtually identical allegations against sole defendant Sheriff Al Cannon Detention Center. (Dkt. No. 7.)

II. Legal Standard

The Magistrate Judge makes a recommendation to the Court that has no presumptive weight and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). Where the plaintiff objects to the R & R, the Court “makes a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.* Where there are no objections to the R & R, the Court reviews the R & R to “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72 advisory committee’s note; *see also Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983) (“In the absence of objection . . . we do not believe that it requires any explanation.”).

III. Discussion

The Court finds that the Magistrate Judge ably addressed the issues and correctly concluded that the amended complaint should be dismissed because Sheriff Al Canon Detention Center is not amenable to suit under 42 U.S.C. § 1983. To state a claim pursuant to Section 1983, Plaintiff must allege that a right secured by the federal constitution or laws was violated by a “person” acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988). It is well settled that only a “person” may act under the color of state law. *See, e.g., Harden v. Green*, 27 Fed. Appx. 173, 178 (4th Cir. 2001) (noting that the “medical department of a prison may not be sued, because it is not a person within the meaning of § 1983”).

The Sheriff Al Cannon Detention Center is not a “person.” *See Nelson v. Lexington Cty. Det. Ctr.*, No. 8:10-cv-2988-JMC, 2011 WL 2066551, at *1 (D.S.C. May 26, 2011) (finding that a detention center is not amenable to a § 1983 suit). Plaintiff objects to the R & R, stating that

“Officer Gambino and other officer[s] that will be named later are responsible[.]” (Dkt. No. 16 at 1.) But Plaintiff has had two opportunities to name a defendant subject to suit under Section 1983 and, affording this *pro se* litigant’s current pleading an appropriately liberal construction, it fails to name a proper defendant.

IV. Conclusion

For the foregoing reasons, the Court **ADOPTS** the R & R as the Order of the Court. (Dkt. No. 13). The amended complaint is **DISMISSED WITH PREJUDICE** and without issuance and service of process.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

September 9, 2019
Charleston, South Carolina